

REMARKS/ARGUMENTS

Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

Claims 1, 2, 4-10, 14-20 and 27-34 are currently pending in this application. By the foregoing amendment, Claims 14-20 and 34 have been revised. Accordingly, Claims 1, 2, 4-10, 14-20 and 27-34 remain in this application for consideration and allowance.

In the December 8, 2008 Office Action the following claim rejections were made, such rejections being respectfully traversed for reasons subsequently set forth herein.

1. Claims 1, 2, 4-8, 15, 16 and 27-34 stand rejected under 35 USCC §103(a) as being unpatentable over U.S. Patent Application Publication 2004/0093082 of Ferree in view of U.S. Patent 6,387,130 to Stone et al;
2. Claim 9 stands rejected under 35 USC §103(a) as being unpatentable over Ferree in view of Stone et al, further in view of U.S. Patent 5,895,428 to Berry;
3. Claim 10 stands rejected under 35 USC §103(a) as being unpatentable over Ferree in view of Stone et al, further in view of U.S. Patent 5,401,269 to Buttner-Janz et al;
4. Claim 14 stands rejected under 35 USC §103(a) as being unpatentable over Ferree in view of Stone et al, further in view of U.S. Patent 6,350,283 to Michelson;
5. Claim 17 stands rejected under 35 USC 103(a) as being unpatentable over Ferree in view of Stone et al, further in view of U.S. Patent 5,776,197 to Rabbe et al;
6. Claim 18 stands rejected under 35 USC §103(a) as being unpatentable over Ferree in view of Stone et al, further in view of U.S. Patent 4,772,287 to Ray et al; and
7. Claims 19 and 20 stand rejected under 35 USC §103(a) as being unpatentable over Ferree in view of Stone et al, further in view of U.S. Patent 6,156,067 to Bryan et al.

The Obviousness Rejections of Claims 1, 2, 4-8, 15, 16 and 27-34

Via independent Claims 1 and 34, each of applicants' Claims 1, 2, 4, 30, 31 and 34 specifies that the recited articulation member is **stiffer** than the recited motion-controlling members. This claimed stiffness relationship between articulation and motion-controlling members in a motion preserving implant device is neither disclosed nor in any manner suggested in either of the Ferree and Stone et al references. It is therefore respectfully submitted that none of applicants' Claims 1, 2, 4, 30, 31 and 34 is rendered obvious by the Ferree/Stone et al reference combination proposed by the Examiner.

Via independent Claim 5, each of applicants' Claims 5-8, 15, 16, 32 and 33 specifies an articulation member made from a first material, and a plurality of elastic motion-controlling members made from a second material, with the second material being **more elastic** than the first material. This claimed elasticity relationship between articulation and motion-controlling members in a spinal implant for insertion between two vertebral bodies is neither disclosed nor in any manner suggested in either of the Ferree and Stone et al references. It is therefore respectfully submitted that none of applicants' Claims 5-8, 15, 16, 32 and 33 is rendered obvious by the Ferree/Stone et al reference combination proposed by the Examiner.

Via independent Claim 27, each of applicants' Claims 27-29 specifies that the recited first **plate** has a **superior surface** with a **convex articulation surface portion**. This claimed convex superior surface portion of an implant plate is neither disclosed nor in any manner suggested in either of the Ferree and Stone et al references. It is therefore respectfully submitted that none of applicants' Claims 27-29 is rendered obvious by the Ferree/Stone et al reference combination proposed by the Examiner.

The Obviousness Rejection of Dependent Claims 9, 10, 14 and 17-20

Claims 9, 10, 14 and 17-20 all depend from Claim 5 which is patentable over Ferree and Stone et al due to the above-noted deficiencies in such references. With respect to dependent Claims 9, 10, 14 and 17-20, the above-noted deficiencies in Ferree and Stone et al are in no manner cured by any of the other references currently being applied by the Examiner, such other references having been applied by the Examiner solely for the following alleged teachings in such references:

Berry - amorphous oxide coating on plates

Buttner-Jantz - projection on articulation member

Michelson - bio-resorbable material on elastic members

Rabbe et al - hollow portions on elastic members

Ray et al - using gel in elastic members

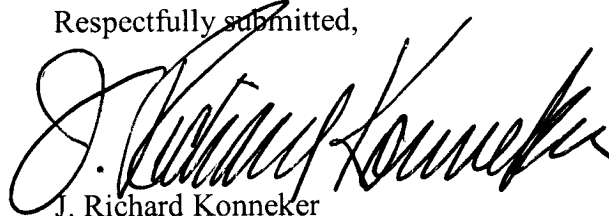
Bryan et al - elastic members having spherical or wheel shapes

For at least the foregoing reasons it is respectfully submitted that dependent Claims 9, 10, 14 and 17-20 are patentably distinguishable over all of the references currently being applied thereto by the Examiner, whether such references are considered singly or in any combination thereof.

In view of the foregoing amendment, remarks and arguments, all of the claims currently pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of Claims 1, 2, 4-10, 14-20 and 27-34 is therefore earnestly solicited.

The Examiner is hereby requested to telephone the undersigned attorney of record at 972/739-8612 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,



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